



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2004

Mr. Clark T. Askins
Askins & Armstrong, P.C.
P.O. Box 1218
La Porte, Texas 77572-1218

OR2004-4245

Dear Mr. Askins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202093.

The City of Morgan's Point (the "city"), which you represent, received a request for a specified appraisal. You claim that the requested information is excepted from disclosure under section 552.105 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

We first note that most of the submitted information is not responsive to this request for information. The requestor specifically seeks access to the "appraisal for streets & alleys in Block 998 & 999, Magnolia Street, Pine Street & lot 6 & 7 Block 999." The submitted information that neither consists of nor is contained in the requested appraisal is not responsive to this request. This decision does not address the public availability of the non-responsive information that you have submitted, and that information need not be released.

We next note that the submitted information to which the requestor seeks access is subject to section 552.022 of the Government Code. This section provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the responsive information consists of a completed appraisal report made of, for, or by the city. The city must release this information under section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 or expressly confidential under other law. You seek to withhold the appraisal report under section 552.105 of the Government Code. We note, however, that this section is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 564 at 2 (1990) (statutory predecessor to Gov't Code § 552.105 protected governmental body's planning and negotiating position with respect to particular transactions). As such, section 552.105 does not constitute other law that makes information confidential for the purposes of section 552.022. Therefore, the city may not withhold any information contained in the submitted appraisal report under section 552.105. As you raise no other exception to the disclosure of this information, it must be released to the requestor in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

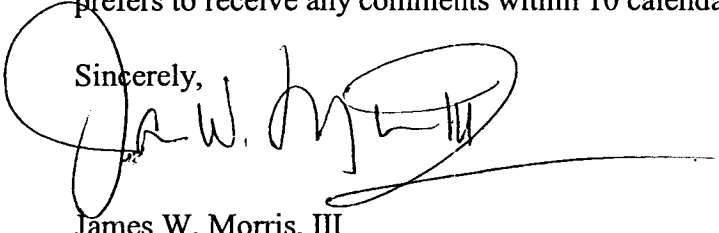
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 202093

Enc: Submitted documents

c: Ms. Linda Westergren
P.O. Box 610
La Porte, Texas 77572
(w/o enclosures)